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7 Hon. Thomas S. Zilly  
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13 UNITED STATES DISTRICT COURT  
14 WESTERN DISTRICT OF WASHINGTON  
15 AT SEATTLE  
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18 ESTHER HOFFMAN; SARAH DOUGLASS,  
19 ANTHONY KIM; IL KIM, and DARIA KIM,  
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21

22 Plaintiffs,  
23  
24 v.  
25

26 TRANSWORLD SYSTEMS INC.; *et al.*,  
27  
28

Defendants.

Case No.: 2:18-cv-01132-TSZ

DEFENDANTS' MOTION TO STRIKE  
PORTIONS OF PLAINTIFFS' SECOND  
AMENDED COMPLAINT

Noted Date: October 23, 2020

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17 NOW COME defendants, Transworld Systems Inc. ("TSI"), Patenaude & Felix, A.P.C.  
18 ("P&F"), and Matthew Cheung ("Cheung"), through undersigned counsel and pursuant to Fed.  
19 R. Civ. P. 12(f), and hereby move to strike certain portions of plaintiffs' second amended  
20  
21 complaint ("SAC").

22 The Court should strike plaintiffs' allegations that the NCSLT entities have agreed to enter  
23 a Proposed Consent Judgment ("PCJ") in separate litigation with the Consumer Financial  
24 Protection Bureau ("CFPB") pending in the United States District Court for the District of  
25 Delaware, because that misrepresentation is demonstrably false. As plaintiffs are well aware, the  
26 CFPB's motion to enter the PCJ was denied by the Delaware court nearly 6 weeks before plaintiffs  
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DEFENDANTS' MOTION TO STRIKE PORTIONS OF  
PLAINTIFFS' SECOND AMENDED COMPLAINT  
(2:18-cv-01132-TSZ) - 1

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filed their SAC because the PCJ was signed by individuals who lacked the authority to consent to the PCJ on behalf of NCSLT. *See Consumer Fin. Prot. Bureau v. Nat'l Collegiate Master Student Tr.*, No. 17-cv-1323, 2020 WL 2915759 (D. Del. May 31, 2020).

Where the Delaware District Court has denied the PCJ because it is *void ab initio*, entered without authority, this Court should strike the PCJ, any allegations that the contents of the PCJ were agreed to, or reliance on the contents of the PCJ to support any allegation in the current Amended Complaint in this case.

## **I. BACKGROUND AND PROCEDURAL HISTORY**

On June 22, 2018, plaintiffs, Esther Hoffman, Sarah Douglass, Anthony Kim, Il Kim, and Daria Kim, filed their first amended class action complaint (“FAC”) in King County, Washington Superior Court, alleging TSI, P&F, and Cheung violated the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et seq.*, Washington Collection Agency Act (“WCAA”), R.C.W. § 19.16.100, *et seq.*, and Washington Consumer Protection Act (“CPA”), 19.86.020, by executing and filing affidavits in state collection lawsuits brought against them to collect unpaid student loan debt. Plaintiffs alleged the affidavits were executed without the affiants’ personal knowledge and without the affiant reviewing or TSI possessing documents proving the NCSLT entities own their respective loans. *See* ECF 1-1. On August 2, 2018, defendants removed the case to this Court. On September 4, 2018, defendants filed a motion to dismiss the FAC.

On November 2, 2018, this Court granted defendants' motion to dismiss the FAC and, later on January 4, 2019, denied plaintiffs' motion for reconsideration. Plaintiffs appealed.

On March 19, 2020, the Ninth Circuit affirmed the Court’s order dismissing plaintiffs’ FDCPA and WCAA claims. In so doing, the appellate court noted that plaintiffs failed to state a

1 claim against defendants for attempting to collect an amount not legally owed in violation of the  
 2 WCAA because, *inter alia*, the consent order between TSI and the CFPB “changed TSI’s legal  
 3 obligations only with respect to the CFPB,” plaintiffs have no private right to enforce the consent  
 4 order. *Id.* at 552. The Ninth Circuit also affirmed the Court’s dismissal of plaintiffs’ FDCPA  
 5 claims under § 1692e(5), explaining plaintiffs failed to plausibly allege defendants threatened to  
 6 take action they did not intend to take.  
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8 The Ninth Circuit reversed the Court’s dismissal of plaintiffs’ per se CPA claims based  
 9 on alleged violations of the FDCPA §§ 1692e(2)(A) and 1692e(10), which this Court had  
 10 dismissed as time-barred, concluding such claims are subject to the CPA’s 4-year statute of  
 11 limitations, and reversed the Court’s dismissal of plaintiffs’ per se CPA claim based on alleged  
 12 violations of § 1692f. The Ninth Circuit also reversed dismissal of plaintiffs’ stand-alone CPA  
 13 claims, but instructed the Court to allow plaintiffs to file an amended complaint to more  
 14 specifically allege whether P&F and Cheung’s activities went beyond providing legal services  
 15 and thus occur within trade or commerce for purposes of the CPA. The Ninth Circuit also  
 16 instructed the Court to allow plaintiffs to amend their complaint to address “whether plaintiffs  
 17 paid money to the Defendants and thus incurred an injury as a result of the default judgment  
 18 obtained through the allegedly false affidavits.” *Id.* at 553.  
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20 Following remand, on June 15, 2020, this Court held a telephone status conference and,  
 21 pursuant to the Ninth Circuit’s opinion and mandate, ordered plaintiffs to file an amended  
 22 complaint by July 7, 2020. *See* ECF 60.  
 23

24 On July 7, 2020, plaintiffs filed their SAC. *See* ECF 61. Like the FAC, plaintiffs’ claims  
 25 in the SAC are based in part on (1) a consent order between TSI and the Consumer Financial  
 26

1 Protection Bureau (“CFPB”), in which TSI did *not* admit liability and did *not* admit any findings  
 2 of fact or conclusions or of law except as necessary for the CFPB to establish jurisdiction over  
 3 TSI; and (2) the void PCJ involving the CFPB and the NCSLT entities which was denied by the  
 4 Delaware court on May 31, 2020, nearly 6 weeks before plaintiffs in this case filed the SAC. *See*  
 5 *CFPB v. Nat'l Collegiate Master Student Loan Tr.*, 2020 WL 2915759 at \*5-6. Notably, the  
 6 Delaware court’s holding was also discussed at the June 15, 2020 status conference, prior to  
 7 plaintiffs’ filing to SAC.

8 The Court should strike plaintiffs’ scandalous misrepresentation that the NCSLT entities  
 9 consented to entry of the PCJ, ¶¶ 137-146, along with Exhibit C to the SAC, because that  
 10 allegations are demonstrably false and impertinent. Plaintiffs’ allegations the NCSLT entities  
 11 “agreed” to certain facts, and the void PCJ, are false, immaterial, and inflammatory, and should  
 12 be stricken from the SAC.

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## 14                   **II.       LAW AND ARGUMENT**

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### 16                   **A. Standard of Review**

17 The federal rules of procedure authorize the Court to “strike from a pleading an  
 18 insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R.  
 19 Civ. P. 12(f). A matter is immaterial when it has no essential or important relationship to the  
 20 claim for relief. *Cairns v. Franklin Mint Co.*, 24 F. Supp. 2d 1013 (C.D. Cal. 1998); *RSM*  
 21 *Production Corp. v. Friedman*, 643 F. Supp. 2d 382 (S.D. N.Y. 2009) (copies of complaints filed  
 22 in other actions that were never resolved on the merits, and therefore did not result in any findings  
 23 of law or fact, were immaterial, and thus district court would strike copies of those complaints  
 24 attached to the plaintiff’s complaint). Impertinent matters consist of allegations that do not pertain  
 25

1 to, and are not necessary for resolution of, the issues in question. *Cairns*, 24 F. Supp. 2d at 1013.  
 2 Scandalous matters are those that improperly cast a derogatory light on someone. Misleading and  
 3 false allegations related to unrelated prior actions or proceedings may be stricken as scandalous.  
 4 *Fodor v. Eastern Shipbuilding Group*, 2014 WL 50783 (N.D. Fla. Jan. 7, 2014) (plaintiff's  
 5 references to irrelevant criminal claims and penalties against defendant outside scope of civil  
 6 cause of action and properly struck from defendant's complaint).

7       ““The function of a 12(f) motion to strike is to avoid the expenditure of time and money  
 8 that must arise from litigating spurious issues by dispensing with those issues prior to trial.””  
 9 *Whittlestone, Inc. v. HandiCraft Co.*, 618 F.3d 970, 973 (9th Cir. 2010) (quoting *Fantasy, Inc. v.*  
 10 *Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev'd on other grounds*, *Fogerty v. Fantasy, Inc.*,  
 11 510 U.S. 517 (1994)). A court may even grant a motion to strike pleadings that are not prejudicial  
 12 to the moving party if granting the motion will make the trial less complicated or otherwise  
 13 streamline the ultimate resolution of the case. *State of Cal. ex rel. State Lands Comm'n v. U.S.*,  
 14 512 F. Supp. 36, 38 (N.D. Cal. 1981).

15       **B. The Court Should Strike ¶¶ 137-146 and Exhibit C Because Those Allegations Are**  
 16       **Demonstrably False, Inaccurate, and Inflammatory**

17       The Court should strike ¶¶ 137-146 of the SAC. Those allegations are founded in the  
 18 contention the NCSLT entities reached an agreement with the CFPB, which purportedly admit  
 19 some conduct which forms the basis of plaintiffs' claims herein. To the contrary, the Delaware  
 20 court denied entry of the void PCJ on May 31, 2020. *See CFPB v. Nat'l Collegiate Master Student*  
 21 *Loan Tr., et al.*, 2020 WL 2915759 at \*1 (concluding the PCJ was signed at the direction of certain  
 22 NCSLT owners by attorneys that lacked authority to act on behalf of the NCLST entities).

1 The PCJ has been held invalid and therefore simply does not exist. Plaintiffs thus cannot  
 2 rely on it for their allegations. But despite the court's May 31, 2020 decision denying the void  
 3 PCJ, plaintiffs nevertheless filed the SAC on July 7, 2020 in which they continue to improperly  
 4 allege “[t]he NCSLTs and the CFPB reached an agreement to enter a Consent Judgment[,]” and  
 5 list numerous “facts” with which plaintiffs allege NCSLT purportedly agreed; for example, that  
 6 its subservicers executed and filed affidavits that falsely claimed the affiant had personal  
 7 knowledge of the account records and filed collection lawsuits without documentation proving  
 8 NCSLT's ownership of the debt. *See ECF 61, ¶¶ 137-146.* Exhibit C to the second amended  
 9 complaint is a copy of the void PCJ. *See ECF 61, pgs. 78-117.* However, as the Delaware court  
 10 explained, the PCJ was signed by attorneys purporting to represent NCSLT without authority to  
 11 enter into such an agreement. *See CFPB v. Nat'l Collegiate Master Student Loan Tr., et al.*, 2020  
 12 WL 2915759 at \*5-6. The allegations in the SAC relating to the void PCJ, and Exhibit C, a copy  
 13 of the void PCJ, are therefore immaterial, impertinent, and prejudicial, as they add no value to the  
 14 complaint or claims and can only serve as an attempt to confuse or prejudice the Court and jury.  
 15 *See Fridman*, 643 F. Supp. 2d at 382 (striking as immaterial copies of complaints filed in other  
 16 actions that were never resolved on the merits); *Schultz v. Braga*, 290 F. Supp. 2d 637 (D. Md.  
 17 2003) (striking allegations relating to prior acts of defendant as irrelevant to case at bar and  
 18 prejudicial to defendant); *Lipsky v. Commonwealth*, 551 F.2d 887 (2d Cir. 1976) (court should  
 19 strike allegations referencing administrative proceedings which do not result in an adjudication  
 20 on the merits); *Smith v. Kentucky Fried Chicken*, 2007 WL 162831 (D. Ky. Jan. 18, 2007)  
 21 (striking demeaning and unsubstantiated allegations). For the same reasons here, the Court should  
 22 strike ¶¶ 137-146 and Exhibit C from plaintiffs' SAC.  
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### III. CONCLUSION

The Court should strike plaintiffs' allegations relating to the void PCJ, which was denied by the Delaware court nearly 6 weeks before plaintiffs filed their SAC, as immaterial, impertinent, and only serve to prejudice defendants. TSI, P&F, and Cheung therefore respectfully move the Court to strike ¶¶ 137-146 and Exhibit C from the SAC.

Dated: September 11, 2020

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 11, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

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